

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941-BB-ACE

RIO CHAMA STREAM SYSTEM
Section 3: Rio Cebolla

Subfile No. CHCB-003-0015B

PRETRIAL ORDER

This Order is entered pursuant to Fed.R.Civ.P. 16(e), 26 and 53 following a pretrial conference held on January 22, 2004 in Santa Fe, New Mexico in connection with the disputed water rights claims of David E. Archuleta and Lydia U. Archuleta (“Defendants”) in subfile CHCB-003-0015B. The Court enters this order to guide the pretrial proceedings between the State of New Mexico (“State”) and the Defendants.

I. SCOPE OF PROCEEDINGS

This adjudication is in the subfile phase, and the proceedings subject to this order are limited subfile proceedings. Therefore, in the absence of an order granting leave to intervene or to appear as *amicus curiae* the only parties that will participate in a hearing on the claims of the Defendants are the State of New Mexico and Defendants David and Lydia Archuleta.

II. BURDEN OF PROOF

The Defendants have the burden of proving all elements of their water rights claim.

III. DISCOVERY/FIELD INVESTIGATION

Formal discovery begins immediately. The State and the Defendants shall adhere to the Fed.R.Civ.P. 26 requirements of liberal, continuing and voluntary disclosure. No later than **April 12, 2004**, the State and the Defendants shall make the following initial disclosures to the opposing party:

- (A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses;
- (B) a copy of, or description by category and location of, all documents, data compilations and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses.

Where appropriate, the Special Master will make a field investigation of disputed claims no later than **June 30, 2004**. Counsel for the State, in cooperation with claimants, shall arrange for these inspections.

IV. FILING OF DISPOSITIVE MOTIONS

The Parties are in agreement that following a period of discovery the filing of dispositive motions may serve to advance a speedy resolution of the Defendants' claims. Therefore, on or before **September 27, 2004** both the State and the Defendants shall each file a motion for summary judgment requesting that the Court either deny or accept the water rights claims of the Defendants.

V. PRETRIAL DISCLOSURES

In the event the claims of the Defendants are not resolved by the filing of dispositive motions, and this matter is set for a hearing, the following schedule for pretrial disclosures shall apply.

Each party shall disclose in writing the identity of any person who may be used at trial to present expert witness testimony no later than 30 days following the Court's ruling on dispositive motions. The disclosure shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; copies of exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including list of all publications authored by the witness with the preceding ten years; the compensation to be paid for the study and testimony; and a list of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

No later than 30 days following the Court's ruling on dispositive motions, each party shall provide to opposing party and promptly file with the Court a list of the following information regarding evidence that it may present at trial, other than evidence to be used solely for impeachment:

(A) the name, address and telephone number of each witness, including rebuttal witnesses, separately identifying those whom the party expects to present and those whom the party may call if the need arises.

(B) the designation of those witnesses whose testimony a party expects to present by means of a deposition, and the identification of the page number and line number of the deposition testimony the party expects to present.

(C) identification of each document or other exhibit, separately identifying those which the party expects to offer and those which the party may offer if the need arises. Copies of all such exhibits shall be provided to opposing parties by this date, but not filed with the Court. For oversize

exhibits or exhibits that are difficult to reproduce, the original may be made available for inspection upon request of the opposing party.

Except for rebuttal witnesses the need for whose testimony cannot be anticipated, no witnesses will be permitted to testify, and no exhibits or other evidence may be introduced at trial, unless disclosed according to the deadlines set out above.

Objections to proposed exhibits, together with a brief statement of the grounds thereof and supporting authority, shall be served on opposing parties and filed with the Court within 30 days of service of pretrial disclosures. Other than objections under Fed.R.Civ.P. 402 and 403, objections not so disclosed are waived unless excused by the Court for good cause and the exhibit shall be deemed admitted by stipulation.

VI. HEARING

If a hearing is necessary to resolve the Defendants' water rights claims, within 30 days of the Court's ruling on dispositive motions the parties shall confer and submit proposed hearing dates to the Court and a date for the final pretrial conference.

VII. LIMITS ON SERVICE OF PLEADINGS

Service of pleadings, discovery materials, and other papers required to be served concerning the proceedings subject to this Order shall be limited to the Defendants and the State.

VIII. OBJECTIONS TO THIS ORDER

Any objections to this Pretrial Order shall be filed with the Court, and served on the State and the above-named Defendants, within 10 days of receipt of this Order.

IT IS SO ORDERED.

/electronic signature/
VICKIE L. GABIN, SPECIAL MASTER